

SB 5076 - H COMM AMD

By Committee on Agriculture & Natural Resources

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The history, economy, culture, and the
4 future of Washington state to a large degree all involve agriculture.
5 In order to develop and promote Washington's agricultural products as
6 part of the existing comprehensive scheme to regulate agricultural
7 commodities, the legislature declares:

8 (1) That the marketing of wheat and barley produced in Washington
9 is in the public interest. It is vital to the continued economic well-
10 being of the citizens of this state and their general welfare that
11 wheat and barley produced in Washington are properly promoted by:

12 (a) Enabling wheat producers and barley producers to help
13 themselves in establishing orderly, fair, sound, efficient, and
14 unhampered marketing, grading, and standardizing of the grains they
15 produce; and

16 (b) Working towards stabilizing the agricultural industries by
17 increasing consumption of wheat and barley within the state, the
18 nation, and internationally;

19 (2) That the wheat and barley industries operate within a
20 regulatory environment that imposes burdens on them for the benefit of
21 society and the citizens of the state and that includes restrictions on
22 marketing autonomy. Those restrictions may impair the agricultural
23 producer's ability to compete in local, domestic, and foreign markets;

24 (3) That it is in the overriding public interest that support for
25 the wheat and barley industries be clearly expressed, that adequate
26 protection be given to the industries and their activities and
27 operations, and that wheat and barley be promoted individually and as
28 part of a comprehensive agricultural industry to:

29 (a) Enhance the reputation and image of Washington state's wheat
30 and barley;

1 (b) Increase the sale and use of Washington state's wheat and
2 barley in local, domestic, and foreign markets;

3 (c) Protect the public by educating the public in reference to the
4 quality, care, and methods used in the production of Washington state's
5 wheat and barley;

6 (d) Increase the knowledge of the health-giving qualities and
7 dietetic value of Washington state's wheat and barley and wheat and
8 barley products;

9 (e) Support and engage in programs or activities that benefit the
10 planting, production, harvesting, handling, processing, marketing, and
11 uses of wheat and barley produced in Washington state;

12 (4) That the commission is established primarily for the benefit of
13 the people of the state of Washington and its economy. By enacting
14 this chapter, the legislature hereby charges the commission, with
15 oversight by the director, to speak on behalf of the Washington state
16 government with regard to wheat and barley production in Washington and
17 issues related to the wheat and barley industry in Washington; and

18 (5) That this chapter is enacted in the exercise of the police
19 powers of this state for the purposes of protecting the health, peace,
20 safety, and general welfare of the people of this state.

21 NEW SECTION. **Sec. 2.** The wheat and barley industries are highly
22 regulated industries, and this chapter and the rules adopted under it
23 are only one aspect of the regulation of those industries. Other
24 regulations and restraints applicable to the wheat and barley
25 industries include:

- 26 (1) Chapter 15.04 RCW, Washington agriculture general provisions;
- 27 (2) Chapter 15.08 RCW, horticultural pests and diseases;
- 28 (3) Chapter 15.14 RCW, planting stock;
- 29 (4) Chapter 15.49 RCW, seeds;
- 30 (5) Chapter 15.54 RCW, fertilizers, minerals, and limes;
- 31 (6) Chapter 15.58 RCW, Washington pesticide control act;
- 32 (7) Chapter 15.64 RCW, farm marketing;
- 33 (8) Chapter 15.83 RCW, agricultural marketing and fair practices;
- 34 (9) Chapter 15.86 RCW, organic food products;
- 35 (10) Chapter 15.92 RCW, center for sustaining agriculture and
36 natural resources;
- 37 (11) Chapter 17.24 RCW, insect pests and plant diseases;

- 1 (12) Chapter 19.94 RCW, weights and measures;
2 (13) Chapter 20.01 RCW, agricultural products--commission
3 merchants, dealers, brokers, buyers, agents;
4 (14) Chapter 22.09 RCW, agricultural commodities;
5 (15) Chapter 43.23 RCW, department of agriculture;
6 (16) Chapter 69.04 RCW, food, drugs, cosmetics, and poisons
7 including provisions of Title 21 U.S.C. relating to the general
8 manufacturing practices, food labeling, food standards, food additives,
9 and pesticide tolerances;
10 (17) Chapter 70.94 RCW, Washington clean air act, agricultural
11 burning;
12 (18) 7 U.S.C., Sec. 136, federal insecticide, fungicide, and
13 rodenticide act; and
14 (19) 7 U.S.C., Sec. 1621, agricultural marketing act.
15

16 NEW SECTION. **Sec. 3.** The definitions in this section apply
17 throughout this chapter unless the context clearly requires otherwise.

18 (1) "Affected area" means the following counties located in the
19 state of Washington: Adams, Asotin, Benton, Chelan, Columbia, Douglas,
20 Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln,
21 Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and
22 Yakima.

23 (2) "Affected producer" means any producer who is subject to this
24 chapter.

25 (3) "Assessment" means the monetary amount established by the
26 commission in accordance with this chapter.

27 (4) "Commercial channels" means the sale of wheat or barley for use
28 as food, feed, seed, or any industrial or chemurgic use, when sold to
29 any commercial buyer, dealer, processor, cooperative, or to any person,
30 public or private, who resells any wheat or barley or product produced
31 from wheat or barley.

32 (5) "Commercial quantities" means five hundred or more bushels of
33 wheat or twenty tons of barley produced for market in any calendar year
34 by any producer.

35 (6) "Commission" means the Washington grain commission.

36 (7) "Department" means the department of agriculture of the state
37 of Washington.

1 (8) "Director" means the director of agriculture of the state of
2 Washington or any qualified person or persons designated by the
3 director of agriculture to act concerning some matter under this
4 chapter.

5 (9) "Grain" or "grains" means wheat and barley and includes all
6 kinds and varieties of wheat and barley grown in the state of
7 Washington.

8 (10) "Handler" means any person who acts, either as principal,
9 agent, or otherwise, in the processing, selling, marketing, or
10 distributing of wheat or barley that is not produced by the handler.
11 "Handler" does not include a common carrier used to transport an
12 agricultural commodity. "To handle" means to act as a handler.

13 (11) "Hosting" may include providing meals, refreshments, lodging,
14 transportation, gifts of a nominal value, reasonable and customary
15 entertainment, and normal incidental expenses at meetings or
16 gatherings.

17 (12) "Mail" or "send," for purposes of any notice relating to rule
18 making, referenda, or elections, means regular mail or electronic
19 distribution, as provided in RCW 34.05.260 for rule making.
20 "Electronic distribution" or "electronically" means distribution by
21 electronic mail or facsimile mail.

22 (13) "Marketing year" means the twelve-month period beginning June
23 1st of any year and ending on May 31st of the subsequent year. "Fiscal
24 year" means the twelve-month period beginning July 1st of any year and
25 ending on June 30th of the subsequent year.

26 (14) "Percent by numbers" means the percent of those persons on the
27 list of affected parties or affected producers.

28 (15) "Person" includes any individual, firm, corporation, limited
29 liability company, trust, association, partnership, society, or any
30 other organization of individuals, or any unit or agency of local or
31 state government.

32 (16) "Producer" means any person who is engaged in the business of
33 producing or causing to be produced for market, in commercial
34 quantities, wheat or barley grown in the designated affected area of
35 the state of Washington, and who has been so engaged in at least one of
36 the past three years. "Producer" includes a person who contracts to
37 produce or grow wheat or barley on behalf of a person who retains title

1 to the seed and its resulting agricultural product or the agricultural
2 product delivered for further production or increase. "To produce"
3 means to act as a producer.

4 (17) "Promotional hosting" means the hosting of individuals and
5 groups of individuals at meetings, meals, and gatherings for the
6 purpose of cultivating trade relations and promoting sales of wheat or
7 barley or processed wheat or barley products.

8 (18) "Referendum" means a vote by the affected parties or affected
9 producers which is conducted by secret ballot.

10 (19) "Rule-making proceedings" means rule making under chapter
11 34.05 RCW.

12 (20) "Vacancy" means that a commission member leaves or is removed
13 from a position on the commission prior to the end of a term, or a
14 nomination process for the beginning of a term concludes with no
15 candidates for a position.

16 NEW SECTION. **Sec. 4.** (1) There is hereby created the Washington
17 grain commission. The commission is composed of five wheat producer
18 members, two barley producer members, two members representing the
19 wheat industry, one member representing the barley industry, and the
20 director or his or her appointee. All members, including the director
21 or his or her appointee, are full voting members of the commission.

22 (2)(a) Each wheat producer member of the commission must be a
23 resident of Washington state, over the age of eighteen years at the
24 time of appointment, and a producer of wheat in the district in and for
25 which he or she is nominated and appointed. A wheat producer member
26 must continue to satisfy these qualifications during his or her term of
27 office.

28 (b) For the nomination and appointment of wheat producer members,
29 the affected area is divided into districts as follows:

30 (i) District I: Ferry, Lincoln, Pend Oreille, Spokane, and Stevens
31 counties;

32 (ii) District II: Whitman county;

33 (iii) District III: Asotin, Columbia, Garfield, and Walla Walla
34 counties;

35 (iv) District IV: Adams, Chelan, Douglas, Grant, and Okanogan
36 counties; and

1 (v) District V: Benton, Franklin, Kittitas, Klickitat, and Yakima
2 counties.

3 (c) The wheat producers in each district are entitled to elect one
4 wheat producer member of the commission.

5 (3)(a) Each barley producer member of the commission must be a
6 resident of Washington state, over the age of eighteen years at the
7 time of appointment, and a producer of barley in the district in and
8 for which he or she is nominated and appointed. A barley producer
9 member must continue to satisfy these qualifications during his or her
10 term of office.

11 (b) For the nomination and appointment of barley producer members,
12 the affected area is divided into districts as follows:

13 (i) District VI: Asotin, Benton, Columbia, Franklin, Garfield,
14 Klickitat, Walla Walla, Whitman, and Yakima counties; and

15 (ii) District VII: Adams, Chelan, Douglas, Ferry, Grant, Kittitas,
16 Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens counties.

17 (c) The barley producers in each district are entitled to elect one
18 barley producer member of the commission.

19 (4) An industry member of the commission need not be a resident of
20 Washington state, but must be involved with the handling, marketing,
21 transportation, processing of, or research regarding wheat or barley
22 produced in Washington state. An industry representative member must
23 continue to satisfy these qualifications during his or her term of
24 office.

25 (5)(a) The regular term of office of each producer member of the
26 commission is three years from January 1st following his or her first
27 appointment by the director and continues until a successor is
28 appointed. The term of office for producer positions representing
29 districts I, IV, and VII is from January 1, 2011, to December 31, 2014,
30 and for three-year terms thereafter. The term of office for producer
31 positions representing districts II, III, V, and VI is from January 1,
32 2012, to December 31, 2015, and for three-year terms thereafter.

33 (b) The regular term of office of each industry representative
34 member of the commission is three years from January 1st following his
35 or her appointment by the director and until a successor is appointed.
36 The term of office for the barley industry representative position is
37 from January 1, 2011, to December 31, 2014, and for three-year terms
38 thereafter. The term of office for the wheat industry representative

1 (position 1) is from January 1, 2011, to December 31, 2014, and for
2 three-year terms thereafter. The term of office for the wheat industry
3 representative (position 2) is from January 1, 2012, to December 31,
4 2015, and for three-year terms thereafter.

5 (c) The director, or his or her appointee, is a permanent member of
6 the commission.

7 NEW SECTION. **Sec. 5.** (1) The Washington grain commission replaces
8 the Washington wheat commission and the Washington barley commission.
9 To accomplish this transition, the initial appointments to the
10 Washington grain commission are as follows:

11 (a) Within thirty days of the effective date of this section, the
12 Washington wheat commission shall forward to the director the names of
13 the currently appointed wheat producer members who shall be appointed
14 to the interim terms specified in subsection (2) of this section.
15 Thereafter, wheat producer members are nominated and appointed under
16 sections 6 and 8 of this act.

17 (b) Within thirty days of the effective date of this section, the
18 Washington barley commission shall forward to the director the names of
19 two currently appointed producer members, one who resides in and is a
20 barley producer in district VI and one who resides in and is a barley
21 producer in district VII who shall be appointed to the interim terms
22 specified in subsection (2) of this section. Thereafter, barley
23 producer members are nominated and appointed under sections 6 and 8 of
24 this act.

25 (c) Within thirty days of the effective date of this section, the
26 Washington wheat commission shall forward to the director the names of
27 the currently appointed wheat industry representative members who shall
28 be appointed to the interim terms specified in subsection (3) of this
29 section. Thereafter the director shall appoint wheat industry
30 representative members under sections 7 and 8 of this act.

31 (d) Within thirty days of the effective date of this section, the
32 Washington barley commission shall forward to the director the name of
33 one of the currently appointed barley industry representative members
34 who shall be appointed to the interim term specified in subsection (3)
35 of this section. Thereafter the director shall appoint the barley
36 industry representative member under sections 7 and 8 of this act.

37 (2) Interim terms for producer members expire as follows:

- 1 (a) Districts I, IV, and VII: December 31, 2010; and
2 (b) Districts II, III, V, and VI: December 31, 2011.
3 (3) Interim terms for industry representative members expire as
4 follows:
5 (a) Barley industry representative: December 31, 2010;
6 (b) Wheat industry representative (position 1): December 31, 2010;
7 and
8 (c) Wheat industry representative (position 2): December 31, 2011.
9 (4) The initial appointments under this section must be made within
10 sixty days of the effective date of this section.

11 NEW SECTION. **Sec. 6.** (1) The director shall appoint the producer
12 members of the commission.

13 (2) Candidates for producer positions on the commission must be
14 nominated to the director in accordance with this section.

15 (3)(a) The director shall mail nominating petitions for producer
16 members not earlier than September 17th and not later than October 2nd
17 in each district in which an open producer position will occur at the
18 end of the year. Each nominating petition must be signed by the
19 candidate and by at least five affected producers of the district from
20 which the nominated candidate would be appointed.

21 (b) Signed nominating petitions must be filed with the director.
22 A nominating petition is filed when it is postmarked by the deadline.

23 (c) The director shall determine the final date for filing
24 nominating petitions and shall display that final date on the face of
25 each nominating petition mailed under this subsection. The final date
26 may not be earlier than October 8th and not later than October 13th in
27 each district in which an open producer position will occur at the end
28 of the year.

29 (4)(a) The director shall prepare an advisory ballot for each
30 district in which an open producer position will occur. All candidates
31 from a district who have been nominated as a producer member in
32 accordance with subsection (3) of this section shall have their names
33 placed on the advisory ballot for that district.

34 (b) The director shall mail advisory ballots to all affected
35 producers in each district in which an open producer position will
36 occur. Advisory ballots must be mailed not earlier than October 18th

1 and not later than November 2nd in each district in which an open
2 producer position will occur at the end of the year.

3 (c) Only those completed advisory ballots may be counted that are
4 sent to the director and postmarked not later than November 25th in
5 each district in which an open producer position will occur at the end
6 of the year. Each advisory ballot must display the following language
7 on its face: "Each completed advisory ballot must be postmarked not
8 later than November 25, [insert year] to be counted."

9 (d) Each affected producer is entitled to one vote.

10 (e) The advisory vote must be conducted in a manner so that it is
11 a secret ballot.

12 (5)(a) If two or more candidates for a position are named in valid
13 petitions, an advisory vote must be held. If only one candidate for a
14 position is named in valid petitions, an advisory vote need not be
15 held, and the director may appoint that candidate or request an
16 additional candidate from the commission for appointment consideration.
17 If a candidate for a position is not named in any valid petition, the
18 commission shall submit a candidate for the director's appointment
19 consideration. Not more than one commission member may be part of the
20 same person under this chapter.

21 (b) The director may request of any candidate whose name is
22 forwarded to the director for potential appointment that the candidate
23 submit a letter stating why he or she wishes to be appointed to the
24 commission.

25 (c) If two or more candidates receive votes in an advisory vote,
26 the director may select either of the two candidates receiving the most
27 votes for the position or may reject both candidates and request a new
28 advisory vote with nominees selected by the commission and, if desired,
29 by the director. If no candidate has been nominated in a petition
30 under subsection (3) of this section, the director shall make an
31 appointment to the position as provided in section 8 of this act.

32 (6) Except for good cause shown, appointments under this section
33 must be made no later than fifteen days before the commencement of the
34 term of office of the position for which the appointment is made.

35 NEW SECTION. **Sec. 7.** (1) The director shall appoint the industry
36 representative members of the commission.

1 (2) Not later than November 1st preceding the expiration of an
2 industry representative member's term of office, the commission shall,
3 by majority vote of a quorum of the commission, select a qualified
4 candidate for the industry representative position and forward the name
5 of the candidate to the director.

6 (3) The director may select the candidate for the position or may
7 reject the candidate and request that the commission forward the name
8 of an additional candidate for appointment consideration by the
9 director.

10 (4) Except for good cause shown, appointments under this section
11 must be made no later than fifteen days before the commencement of the
12 term of office of the position for which the appointment is made.

13 NEW SECTION. **Sec. 8.** In the event of a vacancy on the commission,
14 the remaining members shall recommend to the director the name of a
15 person qualified for appointment to the vacant position. The director
16 may appoint that person for the position or may reject the candidate
17 and request that the commission forward the name of an additional
18 candidate for appointment consideration by the director.

19 NEW SECTION. **Sec. 9.** If a commission member fails or refuses to
20 perform his or her duties due to excessive absence or abandonment of
21 his or her position or engages in any acts of dishonesty or willful
22 misconduct, a majority of a quorum of the commission may recommend in
23 writing to the director that the commission member be removed from his
24 or her position on the commission. Upon receiving this recommendation,
25 the director shall review the matter, including any statement from the
26 commission member who is the subject of the recommendation, and
27 determine whether adequate cause for removal is present. If the
28 director finds that adequate cause for removal exists, the director
29 shall remove the member from his or her commission position. The
30 position is then vacant and must be filled as set forth in this
31 chapter.

32 NEW SECTION. **Sec. 10.** (1) Any member of the commission also may
33 be a member or officer of an association which has similar objectives
34 for which the agricultural commission was formed.

1 (2) An agricultural commission also may contract with such an
2 association for services necessary to carry out any purposes authorized
3 under this chapter, provided that an appropriate contract has been
4 entered into, and provided that any members with potential conflicts of
5 interest comply with applicable provisions in chapter 42.52 RCW.

6 NEW SECTION. **Sec. 11.** (1) The commission shall hold regular
7 meetings, at least quarterly, with the time, date, and place to be
8 determined prior to the new calendar year and published in the state
9 register as required in RCW 42.30.075.

10 (2) The commission may call special meetings as provided for in RCW
11 42.30.080.

12 (3) The commission shall hold an annual meeting. The proposed
13 budget must be presented for discussion at the meeting. Notice of the
14 annual meeting must be given by the commission at least ten days prior
15 to the meeting through the regular news media.

16 (4) Any action taken by the commission requires the majority vote
17 of the members present, provided a quorum is present.

18 (5) All commission meetings are open and public and must be
19 conducted in accordance with chapter 42.30 RCW.

20 NEW SECTION. **Sec. 12.** (1) A majority of the voting members
21 constitute a quorum for the transaction of all business and for
22 carrying out the duties of the commission.

23 (2) A member of the commission shall not receive any salary or
24 other compensation from the commission, except that each member of the
25 commission is compensated in accordance with RCW 43.03.230 for each day
26 spent in actual attendance at or traveling to and from meetings of the
27 commission or on special assignments for the commission, together with
28 subsistence, lodging, and travel expenses allowed by RCW 43.03.050 and
29 43.03.060. Employees of the commission also may be reimbursed
30 subsistence, lodging, and travel expenses allowed by RCW 43.03.050 and
31 43.03.060 when on official commission business.

32 NEW SECTION. **Sec. 13.** (1) The Washington grain commission is the
33 successor in interest to the Washington wheat commission and the
34 Washington barley commission and is vested with all powers and duties

1 transferred to it under this chapter and other such powers and duties
2 as may be authorized by law.

3 (2) All reports, documents, surveys, books, records, files, papers,
4 or written material in the possession of the Washington wheat
5 commission or Washington barley commission must be delivered to the
6 custody of the Washington grain commission. All cabinets, furniture,
7 office equipment, motor vehicles, and other tangible property owned or
8 employed by the Washington wheat commission or Washington barley
9 commission must be delivered to the Washington grain commission. The
10 Washington grain commission shall ensure the timely transfers of all
11 legal titles, registrations, and licenses made necessary by this
12 subsection. All funds, accounts, investments, credits, or other assets
13 held by the Washington wheat commission or Washington barley commission
14 must be transferred or assigned to the Washington grain commission.
15 All debts, liabilities, and obligations owed by the Washington wheat
16 commission or Washington barley commission must be transferred or
17 assigned to the Washington grain commission.

18 (3) All employees of the Washington wheat commission or Washington
19 barley commission are transferred to the Washington grain commission.

20 (4) Beginning with the final initial appointment made under section
21 5 of this act, the interim commissioners shall submit timely reports to
22 the director summarizing the progress made in completing the actions
23 required under this section and any other actions necessary to complete
24 the transition provided for in this chapter.

25 (5) When the interim commissioners have completed the actions
26 required under this section and any other actions necessary to complete
27 the transition provided for in this chapter, they shall so certify in
28 writing to the director. The Washington wheat commission and
29 Washington barley commission cease to exist as of the date that
30 certification is received by the director. Once the director has
31 received the certification, the director is authorized and shall take
32 action to repeal the marketing orders addressing wheat or barley.

33 (6) All actions required under this section must be completed by
34 the interim commissioners no later than one hundred twenty days after
35 the final initial appointment is made under section 5 of this act.

36 (7) RCW 15.66.157 and 15.66.160 do not apply to the Washington
37 wheat commission and the Washington barley commission.

1 NEW SECTION. **Sec. 14.** (1) The commission is an agency of the
2 Washington state government subject to oversight by the director. In
3 exercising its powers and duties, the commission shall carry out the
4 following purposes:

5 (a) To establish plans and conduct programs for advertising and
6 sales promotion, to maintain present markets, or to create new or
7 larger markets for wheat and barley grown in Washington;

8 (b) To engage in cooperative efforts in the domestic or foreign
9 marketing of wheat and barley grown in Washington;

10 (c) To provide for carrying on research studies to find more
11 efficient methods of production, irrigation, processing,
12 transportation, handling, and marketing of wheat and barley grown in
13 Washington;

14 (d) To adopt rules to provide for improving standards and grades by
15 defining, establishing, and providing labeling requirements with
16 respect to wheat and barely grown in Washington;

17 (e) To investigate and take necessary action to prevent unfair
18 trade practices relating to wheat and barley grown in Washington;

19 (f) To provide information or communicate on matters pertaining to
20 the production, irrigation, processing, transportation, marketing, or
21 uses of wheat and barley grown in Washington to any elected official or
22 officer or employee of any agency;

23 (g) To provide marketing information and services for producers of
24 wheat and barley in Washington;

25 (h) To provide information and services for meeting resource
26 conservation objectives of producers of wheat and barley in Washington;

27 (i) To provide for education and training related to wheat and
28 barley grown in Washington; and

29 (j) To assist and cooperate with the department or any local,
30 state, or federal government agency in the investigation and control of
31 exotic pests and diseases that could damage or affect the production or
32 trade of wheat and barley grown in Washington.

33 (2) The commission has the following powers and duties:

34 (a) To collect the assessments of producers as provided in this
35 chapter and to expend the same in accordance with this chapter;

36 (b) To maintain a list of the names and addresses of affected
37 producers that may be compiled from information used to collect

1 assessments authorized under this chapter and data on the value of each
2 producer's production for a minimum three-year period;

3 (c) To maintain a list of the names and addresses of persons who
4 handle wheat or barley within the affected area and data on the amount
5 and value of the wheat and barley handled for a minimum three-year
6 period by each person;

7 (d) To request records and audit the records of producers or
8 handlers of wheat or barley during normal business hours to determine
9 whether the appropriate assessment has been paid;

10 (e) To fund, conduct, or otherwise participate in scientific
11 research relating to wheat or barley, including but not limited to
12 research to find more efficient methods of irrigation, production,
13 processing, handling, transportation, and marketing of wheat or barley,
14 or regarding pests, pesticides, food safety, irrigation,
15 transportation, and environmental stewardship related to wheat or
16 barley;

17 (f) To work cooperatively with local, state, and federal agencies,
18 universities, and national organizations for the purposes provided in
19 this chapter;

20 (g) To establish a foundation using commission funds as grant money
21 when the foundation benefits the wheat or barley industry in Washington
22 and implements the purposes provided in this chapter;

23 (h) To acquire or own intellectual property rights, licenses, or
24 patents and to collect royalties resulting from commission-funded
25 research related to wheat or barley;

26 (i) To enter into contracts or interagency agreements with any
27 private or public agency, whether federal, state, or local, to carry
28 out the purposes and powers provided in this chapter, including
29 specifically contracts or agreements for research described in (e) of
30 this subsection. Personal service contracts must comply with chapter
31 39.29 RCW;

32 (j) To institute and maintain in its own name any and all legal
33 actions necessary to carry out the provisions of this chapter,
34 including actions by injunction, mandatory injunction or civil
35 recovery, or proceedings before administrative tribunals or other
36 governmental authorities;

37 (k) To retain in emergent situations the services of private legal

1 counsel to conduct legal actions on behalf of the commission. The
2 retention of a private attorney is subject to review and approval by
3 the office of the attorney general;

4 (l) To elect a chair and other officers as determined advisable;

5 (m) To employ and discharge at its discretion administrators and
6 additional personnel, advertising and research agencies, and other
7 persons and firms as appropriate and pay compensation;

8 (n) To acquire personal property and purchase or lease office space
9 and other necessary real property and transfer and convey that real
10 property;

11 (o) To keep accurate records of all its receipts and disbursements
12 by commodity, which records must be open to inspection and audit by the
13 state auditor or private auditor designated by the state auditor at
14 least every five years;

15 (p) To borrow money and incur indebtedness;

16 (q) To make necessary disbursements for routine operating expenses;

17 (r) To expend funds for commodity-related education, training, and
18 leadership programs as the commission deems expedient;

19 (s) To accept and expend or retain any gifts, bequests,
20 contributions, or grants from private persons or private and public
21 agencies to carry out the purposes provided in this chapter;

22 (t) To apply for and administer federal market access programs or
23 similar programs or projects and provide matching funds as may be
24 necessary;

25 (u) To engage in appropriate fund-raising activities for the
26 purpose of supporting activities of the commission authorized in this
27 chapter;

28 (v) To participate in international, federal, state, and local
29 hearings, meetings, and other proceedings relating to the production,
30 irrigation, manufacture, regulation, transportation, distribution,
31 sale, or use of wheat or barley; or the regulation of the manufacture,
32 distribution, sale, or use of any pesticide, as defined in chapter
33 15.58 RCW, or any agricultural chemical which is of use or potential
34 use in producing wheat or barley. This participation may include
35 activities authorized under RCW 42.17.190, including the reporting of
36 those activities to the public disclosure commission;

37 (w) To speak on behalf of the Washington state government on a
38 nonexclusive basis regarding issues related to wheat and barley,

1 including but not limited to trade negotiations and market access
2 negotiations and to fund industry organizations engaging in those
3 activities;

4 (x) To adopt, rescind, and amend rules and regulations reasonably
5 necessary for the administration and operation of the commission and
6 the enforcement of its duties under this chapter;

7 (y) To administer, enforce, direct, and control the provisions of
8 this chapter and any rules adopted under this chapter; and

9 (z) Other powers and duties that are necessary to carry out the
10 purposes of this chapter.

11 NEW SECTION. **Sec. 15.** (1) The commission shall develop and submit
12 to the director for approval any plans, programs, and projects
13 concerning the following:

14 (a) The establishment, issuance, effectuation, and administration
15 of appropriate programs or projects for the advertising and promotion
16 of wheat and barley; and

17 (b) The establishment and effectuation of market research projects,
18 market development projects, or both, to the end that the marketing and
19 utilization of wheat and barley may be encouraged, expanded, improved,
20 or made more efficient.

21 (2) The director shall review the commission's advertising or
22 promotion program to ensure that no false claims are being made
23 concerning any agricultural commodity.

24 (3) The commission, prior to the beginning of its fiscal year,
25 shall prepare and submit to the director for approval its research
26 plan, its commodity-related education and training plan, and its budget
27 on a fiscal period basis.

28 (4) The director shall review and make a determination of all
29 submissions described in this section in a timely manner.

30 NEW SECTION. **Sec. 16.** (1) Except as provided in subsection (2) of
31 this section, all rule-making proceedings conducted under this chapter
32 must be in accordance with chapter 34.05 RCW.

33 (2) Rule-making proceedings conducted under this chapter are exempt
34 from compliance with RCW 34.05.310 and 43.135.055 and chapter 19.85
35 RCW, the regulatory fairness act, when the proposed rule is subject to
36 a referendum.

1 (3) Rules, regulations, and orders made by the commission must be
2 filed with the director and become effective as provided in RCW
3 34.05.380.

4 NEW SECTION. **Sec. 17.** (1) The commission may receive donations of
5 liquor produced from wheat or barley grown in Washington and may use
6 the liquor for the promotional purposes specified in subsection (2) of
7 this section.

8 (2) The commission may engage directly or indirectly in the
9 promotion of liquor produced from wheat or barley grown in Washington
10 including, without limitation, the acquisition in any lawful manner and
11 the dissemination without charge of the liquor. This dissemination is
12 not deemed a sale for any purpose and the commission is not deemed a
13 producer, supplier, or manufacturer, or the clerk, servant, or agent of
14 a producer, supplier, distributor, or manufacturer under Title 66 RCW.
15 This dissemination without charge may be solely for agricultural
16 development or trade promotion, and not for fund-raising purposes under
17 section 14(2)(u) of this act. Dissemination for promotional purposes
18 may include promotional hosting and must in the good faith judgment of
19 the commission be in the aid of the marketing, advertising, or
20 promotion of wheat or barley grown in Washington, or research related
21 to that marketing, advertising, or promotion.

22 (3) The commission shall adopt rules governing promotional hosting
23 expenditures by its employees, agents, or commission members under RCW
24 15.04.200.

25 NEW SECTION. **Sec. 18.** A new section is added to chapter 66.12 RCW
26 to read as follows:

27 The Washington grain commission created under section 4 of this act
28 may purchase or receive donations of liquor produced from wheat or
29 barley grown in Washington and may use the liquor for the promotional
30 purposes specified in section 17(2) of this act. Liquor furnished to
31 the commission under this section which is used within the state is
32 subject to the taxes imposed under RCW 66.24.210. A license, permit,
33 or bond is not required of the Washington grain commission under this
34 title for the promotional purposes specified in section 17(2) of this
35 act.

1 NEW SECTION. **Sec. 19.** (1) The restrictive provisions of chapter
2 43.78 RCW do not apply to promotional printing and literature for the
3 commission.

4 (2) All promotional printing contracts entered into by the
5 commission must be executed and performed under conditions of
6 employment that substantially conform to the laws of this state
7 respecting hours of labor, the minimum wage scale, and the rules and
8 regulations of the department of labor and industries regarding
9 conditions of employment, hours of labor, and minimum wages, and the
10 violation of such a provision of any contract is grounds for
11 cancellation of the contract.

12 NEW SECTION. **Sec. 20.** (1) All money received by the commission
13 from the assessment levied under this chapter and all moneys
14 transferred to the commission under section 13(2) of this act must be
15 deposited in the banks designated by the commission and disbursed by
16 order of the commission. RCW 43.01.050 does not apply to money
17 collected under this chapter.

18 (2) The commission shall adopt rules or establish policies as it
19 determines necessary to ensure proper accounting and disbursement of
20 moneys received and held by the commission.

21 NEW SECTION. **Sec. 21.** Unless covered by a blanket bond covering
22 officials or employees of the state of Washington, every administrator,
23 employee, or other person occupying a position of trust for the
24 commission and every commission member actually handling or drawing
25 upon funds shall give a bond in the penal amount as may be required by
26 the commission, the premium for which bond or bonds must be paid by the
27 commission.

28 NEW SECTION. **Sec. 22.** (1) Obligations incurred by the commission
29 and any other liabilities or claims against the commission are
30 enforceable only against the assets of the commission and, except to
31 the extent of those assets, liability for the debts or actions of the
32 commission does not exist against either the state of Washington or any
33 subdivision or instrumentality thereof or against any member, employee,
34 or agent of the commission or the state of Washington in his or her
35 individual capacity.

1 (2) Except as otherwise provided in this chapter, neither the
2 commission members, nor its employees, may be held individually
3 responsible for errors in judgment, mistakes, or other acts, either of
4 commission or omission, as principal, agent, person, or employee,
5 except for their own individual acts of dishonesty or crime. A person
6 or employee may not be held individually responsible for any act or
7 omission of any other commission members. The liability of the
8 commission members is several and not joint, and a member is not liable
9 for the default of any other member. This subsection confirms that
10 commission members have been and continue to be state officers or
11 volunteers for purposes of RCW 4.92.075 and are entitled to the
12 defenses, indemnifications, limitations of liability, and other
13 protections and benefits of chapter 4.92 RCW.

14 (3) In any civil or criminal action or proceeding for violation of
15 any statute, including a rule adopted under that statute, or common law
16 against monopolies or combinations in restraint of trade, including any
17 action under chapter 19.86 RCW, proof that the act complained of was
18 done in compliance with the provisions of this chapter, and in
19 furtherance of the purposes and provisions of this chapter, is a
20 complete defense to such an action or proceeding.

21 NEW SECTION. **Sec. 23.** Copies of the proceedings, records, and
22 acts of the commission, when certified by the chair, are admissible in
23 any court as prima facie evidence of the truth of the statements
24 contained therein.

25 NEW SECTION. **Sec. 24.** (1) Under RCW 42.56.380, certain
26 agricultural business records, commission records, and department of
27 agriculture records relating to the commission and producers of
28 agricultural commodities are exempt from public disclosure.

29 (2) Financial and commercial information and records submitted to
30 either the department or the commission for the purpose of
31 administering this chapter may be shared between the department and the
32 commission. They may also be used, if required, in any suit or
33 administrative hearing involving this chapter.

34 (3) This section does not prohibit:

35 (a) The issuance of general statements based upon the reports of

1 persons subject to this chapter as long as the statements do not
2 identify the information furnished by any person; or

3 (b) The publication by the director or the commission of the name
4 of any person violating this chapter and a statement of the manner of
5 the violation by that person.

6 NEW SECTION. **Sec. 25.** (1) The commission shall reimburse the
7 department for all costs incurred by the department for actions
8 necessary to carry out this chapter, including the adoption of rules,
9 facilitating or conducting nominations or advisory votes, and the
10 review and approval required under section 15 of this act.

11 (2) The director may provide by rule for a method to fund staff
12 support for all commodity boards or commissions in accordance with RCW
13 43.23.033 if a position is not directly funded by the legislature and
14 costs are related to the specific activity undertaken on behalf of an
15 individual commodity board or commission. The commission shall provide
16 funds to the department according to the rules adopted by the director.

17 NEW SECTION. **Sec. 26.** (1) The commission shall prepare a list of
18 all producers of wheat and a list of all producers of barley, which
19 must include for each producer his or her name and address and the
20 amount, by unit, of wheat or barley produced during the past three
21 years.

22 (2) The commission shall prepare a list of all persons who handle
23 wheat and all persons who handle barley, which must include for each
24 handler his or her name and address and the amount, by unit, of wheat
25 or barley handled during the past three years.

26 (3) It is the responsibility of each producer or handler to ensure
27 that his or her correct address is filed with the commodity commission
28 and to submit production data and handling data to the commission as
29 prescribed in this chapter.

30 (4) Any qualified person may, at any time, have his or her name
31 placed upon any list for which he or she qualifies by delivering or
32 mailing the information to the commission. The lists must be corrected
33 and brought up-to-date in accordance with evidence and information
34 provided to the commission.

35 (5) For all purposes of giving notice, conducting advisory votes,
36 and holding referenda, the applicable list corrected up to the day

1 preceding the date the list is certified by the commission is the list
2 of all affected producers entitled to notice or to vote. Inadvertent
3 failure to notify an affected producer does not invalidate a proceeding
4 conducted under this chapter.

5 (6) At the director's request when conducting a referendum for the
6 commission, the commission shall provide the director a certified list
7 of affected producers from the commission records. The list must
8 include all information required by the director to conduct a
9 referendum under this chapter, must be used to determine assent as
10 provided in this chapter, and must be kept in the rule-making file by
11 the director.

12 NEW SECTION. **Sec. 27.** (1)(a) The initial annual assessments are
13 the amounts most recently approved by referendum by wheat producers and
14 barley producers and effective at the time the grain commission is
15 established:

16 (i) The initial annual assessment on wheat is three-fourths of one
17 percent of the net receipts at the first point of sale;

18 (ii) The initial annual assessment on barley is one percent of the
19 net receipts at the first point of sale.

20 (b) The initial annual assessments established in this subsection
21 are effective unless and until changed pursuant to the procedure in
22 subsection (2) of this section.

23 (2)(a) If the commission determines, based on information available
24 to it, that the revenue from the assessment levied on wheat or barley
25 under this chapter is too high or is inadequate to accomplish the
26 purposes of this chapter, then with the oversight of the director the
27 commission shall adopt a resolution setting forth the needs of the
28 industry, the extent and probable cost of the commission activities
29 identified as necessary to address the needs of the industry together
30 with a brief statement justifying each activity, the proposed new
31 assessment rate, and the expected revenue from the proposed assessment
32 levied. The resolution must be submitted to the director for review
33 and approval.

34 (b) If the director objects to the proposed new assessment rate,
35 the director shall explain the reasons for the objection to the
36 commission in writing. The commission may adopt a revised resolution
37 and submit it to the director for review and approval.

1 (c) Upon receiving the director's approval and with the director's
2 oversight, the commission may conduct a referendum to determine whether
3 affected producers assent to the proposed new assessment rate, or may
4 refer the matter to the director to conduct the referendum on behalf of
5 the commission. Only wheat producers may vote on a proposed new
6 assessment rate on wheat, and only barley producers may vote on a
7 proposed new assessment rate on barley.

8 (i) The producers have assented to the new rate if more than fifty
9 percent by number and more than fifty percent by volume of those
10 replying assent. The determination by volume is made on the basis of
11 volume as determined in the list of affected producers created under
12 section 26 of this act.

13 (ii) Results of the referendum must be communicated via the news
14 media.

15 (iii) If the requisite assent is given, the commission shall adopt
16 the new rate at its next meeting. The new rate must be adopted by rule
17 in accordance with chapter 34.05 RCW, except as provided in section 16
18 of this act.

19 (3)(a) Notwithstanding the provisions in subsection (2) of this
20 section, the commission may, by majority vote of a quorum of its
21 members, adopt a finding that its current revenue substantially exceeds
22 that needed to support the current needs of the industry and the
23 current cost of commission activities and order a temporary reduction
24 in the annual assessments below the rate currently authorized under
25 subsection (1) of this section.

26 (b) With the director's approval, such a reduction commences on
27 July 1st following the commission's action and expires automatically on
28 June 30th of the subsequent year unless extended by a new action of the
29 commission under this subsection.

30 (c) Any action taken under this subsection must be communicated to
31 affected producers via the news media and any other means it deems
32 effective.

33 (4) The annual assessment authorized in this chapter may not exceed
34 three percent of the total market value of all affected units sold,
35 processed, stored, or delivered for sale, processing, or storage by all
36 affected producers of wheat or barley during the year to which the
37 assessment applies.

1 NEW SECTION. **Sec. 28.** (1) The collection of the assessment made
2 and levied by the commission must be paid by the producer upon all
3 commercial quantities of wheat and all commercial quantities of barley
4 sold, processed, stored, or delivered for sale, processing, or storage
5 by the producer. However, an assessment may not be levied or collected
6 on wheat or barley grown and used by the producer for feed, seed, or
7 personal consumption.

8 (2) Handlers including warehousemen, processors, and feedlots
9 receiving wheat or barley in commercial quantities from producers shall
10 collect the assessment made and levied by the commission from each
11 producer whose production they handle and remit the assessment to the
12 commission on a monthly basis. Affected units of wheat or barley must
13 not be transported, carried, shipped, sold, stored, or otherwise
14 handled or disposed of until every due and payable assessment under
15 this chapter has been paid and the receipt issued, but liability under
16 this chapter does not attach to common carriers in the regular course
17 of their business.

18 (3) Any due and payable assessment levied under this chapter
19 constitutes a personal debt of every person so assessed or who
20 otherwise owes the assessment, and the assessment is due and payable to
21 the commission on a monthly basis. In the event any person fails to
22 pay the full amount of such an assessment, the commission may add to
23 the unpaid assessment an amount not exceeding ten percent of the unpaid
24 assessment to defray the cost of enforcing the collecting of the unpaid
25 assessment. In the event of failure of the person or persons to pay
26 any due and payable assessment, the commission may bring a civil action
27 against the person or persons in a state court of competent
28 jurisdiction for the collection thereof, together with the additional
29 ten percent, and the action must be tried and judgment rendered as in
30 any other cause of action for debt due and payable. Venue for an
31 action against a person owing a due and payable assessment to the
32 commission is in Spokane county or a county in which the person
33 produces or handles wheat or barley.

34 NEW SECTION. **Sec. 29.** (1) All moneys collected or otherwise
35 received by the commission under this chapter must be used solely by
36 and for the commission and may not be used for any other commission or
37 the department, except as otherwise provided in this chapter. These

1 moneys must be deposited in accounts in the name of the commission in
2 any bank which is a state depository. All expenses and disbursements
3 incurred and made under this chapter must be paid from moneys collected
4 and received under this chapter without the necessity of a specific
5 legislative appropriation, and all moneys deposited for the account of
6 any order must be paid from the account by check or voucher in the
7 form and in the manner and upon the signature of the person as may be
8 prescribed by the commission. RCW 43.01.050 is not applicable to such
9 an account or any moneys so received, collected, or expended.

10 (2) The commission shall ensure that the expenditure of assessments
11 collected from wheat producers and moneys transferred from the wheat
12 commission under section 13(2) of this act are used for purposes
13 related to the wheat industry and that the expenditure of assessments
14 collected from barley producers and moneys transferred from the barley
15 commission under section 13(2) of this act are used for purposes
16 related to the barley industry. However, this section does not prevent
17 assessments from wheat, assessments from barley, and moneys transferred
18 from the wheat commission or barley commission under section 13(2) of
19 this act to be combined or used together for activities, projects, and
20 other endeavors that benefit both the wheat and barley industries.

21 NEW SECTION. **Sec. 30.** (1) Any funds of the commission may be
22 invested in savings or time deposits in banks, trust companies, and
23 mutual savings banks that are doing business in the United States, up
24 to the amount of insurance afforded those accounts by the federal
25 deposit insurance corporation.

26 (2) This section applies to all funds which may be lawfully so
27 invested, which in the judgment of the commission are not required for
28 immediate expenditure. The authority granted by this section is not
29 exclusive and is cumulative and in addition to other authority provided
30 by law for the investment of the funds including, but not limited to,
31 authority granted under chapters 39.58, 39.59, and 43.84 RCW.

32 NEW SECTION. **Sec. 31.** (1) To prove eligibility to vote or hold a
33 position on the commission, each producer must show records of sales of
34 commercial quantities of wheat or barley sold within the past three
35 years if requested by the commission.

1 (2) Each handler shall keep a complete and accurate record of all
2 wheat and barley handled.

3 (3) Handlers' records must be in the form and contain the
4 information as the commission may by rule prescribe, must be preserved
5 for a period of three years, and are subject to inspection at any time
6 upon demand of the commission or its agents.

7 (4) The commission through its agents may enter and inspect the
8 premises and records of any handler of wheat or barley for the purpose
9 of enforcing this chapter. The commission has the authority to issue
10 subpoenas for the production of books, records, documents, and other
11 writings of any kind from any handler and from any person having,
12 either directly or indirectly, actual or legal control of or over the
13 premises, books, records, documents, or other writings, for the purpose
14 of enforcing this chapter or rules adopted under this chapter.

15 (5) All information furnished to or acquired by the commission or
16 by an agent of the commission under this section must be kept
17 confidential by all officers, employees, and agents of the commission,
18 except as may be necessary in a suit or other legal proceeding brought
19 by, on behalf of, or against the commission or its employees or agents
20 involving the enforcement of this chapter or rules adopted under this
21 chapter.

22 (6) This section does not prohibit:

23 (a) The issuance of general statements based upon the reports of a
24 number of persons subject to this chapter, which statements do not
25 identify the information furnished by any person; or

26 (b) The publication by the commission or the director of the name
27 of any person violating this chapter or rules adopted under this
28 chapter, together with a statement of the particular provisions and the
29 manner of the violation.

30 NEW SECTION. **Sec. 32.** (1) It is a misdemeanor for any person
31 willfully to:

32 (a) Violate or aid in the violation of this chapter or rules
33 adopted under this chapter;

34 (b) Submit a false or fraudulent report, statement, or record
35 required by the director or the commission under this chapter or rules
36 adopted under this chapter; or

1 (c) Fail or refuse to submit a report, statement, or record
2 required by the director or the commission under this chapter or rules
3 adopted under this chapter.

4 (2) In the event of a violation or threatened violation of this
5 chapter or rules adopted under this chapter, the director or the
6 commission is entitled to an injunction in a court of competent
7 jurisdiction to prevent further violation and to a decree of specific
8 performance, and to a temporary restraining order and injunction
9 pending litigation.

10 (3) In the event of a violation or threatened violation of this
11 chapter or rules adopted under this chapter, the director, the
12 commission, or any affected producer on joining the commission may
13 refer the violation to the prosecutor in any county in which the
14 defendant or any defendant resides, or in which the violation was
15 committed, or in which the defendant or any defendant has his or her
16 principal place of business.

17 (4) The superior courts are hereby vested with jurisdiction to
18 enforce this chapter and the rules of the commission issued under this
19 chapter, and to prevent and restrain violations of this chapter.

20 **Sec. 33.** RCW 15.04.200 and 2006 c 330 s 24 are each amended to
21 read as follows:

22 (1) Under the authority of Article VIII of the state Constitution
23 as amended, agricultural commodity commission expenditures for
24 agricultural development or trade promotion and promotional hosting by
25 an agricultural commodities commission under chapters 15.24, 15.28,
26 15.44, 15.65, 15.66, 15.88, 15.89, 15.-- (the new chapter created in
27 section 40 of this act), and 16.67 RCW shall be pursuant to specific
28 budget items as approved by the agricultural commodity commission at
29 the annual public hearings on the agricultural commodity commission
30 budget.

31 (2) Agricultural commodity commissions shall adopt rules governing
32 promotional hosting expenditures by agricultural commodity commission
33 employees, agents or commissioners. The rules shall identify officials
34 and agents authorized to make expenditures and the objectives of the
35 expenditures. Individual agricultural commodity commission
36 commissioners shall make promotional hosting expenditures, or seek
37 reimbursements for these expenditures, only in those instances where

1 the expenditures have been approved by the agricultural commodity
2 commission. All payments and reimbursements shall be identified and
3 supported on vouchers.

4 (3) Agricultural commodity commissions shall be exempt from the
5 requirements of RCW 43.01.090 and 43.19.500 and chapter 43.82 RCW.

6 **Sec. 34.** RCW 15.65.620 and 1961 c 256 s 62 are each amended to
7 read as follows:

8 Nothing in this chapter shall apply to nor alter nor change any
9 provision of the statutes of the state of Washington relating to the
10 apple (~~(advertising)~~) commission (RCW 15.24.010-15.24.210 inclusive),
11 to the soft tree fruits commission (RCW 15.28.010-15.28.310 inclusive),
12 (~~(or)~~) to dairy products commission (RCW 15.44.010-15.44.180
13 inclusive), or to (~~(wheat)~~) the grain commission (~~((RCW 15.63.010-~~
14 ~~15.63.920--inclusive))~~) (chapter 15.-- (the new chapter created in
15 section 40 of this act)). No marketing agreement or order containing
16 any of the provisions specified in RCW 15.65.310 or 15.65.320 shall be
17 issued with respect to the respective commodities affected by said
18 statutes unless and until any commission established by any such
19 statute shall cease to perform the provisions of its respective
20 statute. The provisions of this chapter shall have no application to
21 any marketing agreement or order issued pursuant to the Washington
22 agricultural enabling act of 1955 (chapter 15.66 RCW); except that any
23 such marketing agreement or order issued pursuant to said 1955 act may
24 be brought under this chapter upon compliance with the provisions of
25 this chapter relating to amendments of marketing agreements and orders,
26 whereupon:

27 (1) The provisions of this chapter shall apply to and the
28 provisions of said 1955 act shall cease to apply to such marketing
29 agreement or order; and

30 (2) All assets and liabilities of, or pertaining to such agreement
31 or order, and of any commission or agency established by it, shall
32 continue to exist with respect to such agreement, order, commission or
33 agency after being so brought under this chapter.

34 **Sec. 35.** RCW 15.66.270 and 2007 c 234 s 100 are each amended to
35 read as follows:

36 This chapter does not apply to any provision of the statutes of the

1 state of Washington relating to the Washington apple commission
2 (chapter 15.24 RCW), to the soft tree fruits commission (chapter 15.28
3 RCW), (~~(or)~~) to the dairy products commission (chapter 15.44 RCW), or to
4 the Washington grain commission (chapter 15.-- RCW (the new chapter
5 created in section 40 of this act)). Marketing agreements or orders
6 shall not be issued with respect to apples, soft tree fruits, (~~(or)~~)
7 dairy products, or wheat or barley for the purposes specified in RCW
8 15.66.030 (1) or (2).

9 **Sec. 36.** RCW 41.06.070 and 2002 c 354 s 209 are each amended to
10 read as follows:

11 (1) The provisions of this chapter do not apply to:

12 (a) The members of the legislature or to any employee of, or
13 position in, the legislative branch of the state government including
14 members, officers, and employees of the legislative council, joint
15 legislative audit and review committee, statute law committee, and any
16 interim committee of the legislature;

17 (b) The justices of the supreme court, judges of the court of
18 appeals, judges of the superior courts or of the inferior courts, or to
19 any employee of, or position in the judicial branch of state
20 government;

21 (c) Officers, academic personnel, and employees of technical
22 colleges;

23 (d) The officers of the Washington state patrol;

24 (e) Elective officers of the state;

25 (f) The chief executive officer of each agency;

26 (g) In the departments of employment security and social and health
27 services, the director and the director's confidential secretary; in
28 all other departments, the executive head of which is an individual
29 appointed by the governor, the director, his or her confidential
30 secretary, and his or her statutory assistant directors;

31 (h) In the case of a multimember board, commission, or committee,
32 whether the members thereof are elected, appointed by the governor or
33 other authority, serve ex officio, or are otherwise chosen:

34 (i) All members of such boards, commissions, or committees;

35 (ii) If the members of the board, commission, or committee serve on
36 a part-time basis and there is a statutory executive officer: The
37 secretary of the board, commission, or committee; the chief executive

1 officer of the board, commission, or committee; and the confidential
2 secretary of the chief executive officer of the board, commission, or
3 committee;

4 (iii) If the members of the board, commission, or committee serve
5 on a full-time basis: The chief executive officer or administrative
6 officer as designated by the board, commission, or committee; and a
7 confidential secretary to the chair of the board, commission, or
8 committee;

9 (iv) If all members of the board, commission, or committee serve ex
10 officio: The chief executive officer; and the confidential secretary
11 of such chief executive officer;

12 (i) The confidential secretaries and administrative assistants in
13 the immediate offices of the elective officers of the state;

14 (j) Assistant attorneys general;

15 (k) Commissioned and enlisted personnel in the military service of
16 the state;

17 (l) Inmate, student, part-time, or temporary employees, and part-
18 time professional consultants, as defined by the Washington personnel
19 resources board;

20 (m) The public printer or to any employees of or positions in the
21 state printing plant;

22 (n) Officers and employees of the Washington state fruit
23 commission;

24 (o) Officers and employees of the Washington state apple
25 (~~(advertising)~~) commission;

26 (p) Officers and employees of the Washington state dairy products
27 commission;

28 (q) Officers and employees of the Washington tree fruit research
29 commission;

30 (r) Officers and employees of the Washington state beef commission;

31 (s) Officers and employees of the Washington grain commission;

32 (t) Officers and employees of any commission formed under chapter
33 15.66 RCW;

34 (~~(t)~~) (u) Officers and employees of agricultural commissions
35 formed under chapter 15.65 RCW;

36 (~~(u)~~) (v) Officers and employees of the nonprofit corporation
37 formed under chapter 67.40 RCW;

1 (~~(v)~~) (w) Executive assistants for personnel administration and
2 labor relations in all state agencies employing such executive
3 assistants including but not limited to all departments, offices,
4 commissions, committees, boards, or other bodies subject to the
5 provisions of this chapter and this subsection shall prevail over any
6 provision of law inconsistent herewith unless specific exception is
7 made in such law;

8 (~~(w)~~) (x) In each agency with fifty or more employees: Deputy
9 agency heads, assistant directors or division directors, and not more
10 than three principal policy assistants who report directly to the
11 agency head or deputy agency heads;

12 (~~(x)~~) (y) All employees of the marine employees' commission;

13 (~~(y)~~) (z) Staff employed by the department of community, trade,
14 and economic development to administer energy policy functions and
15 manage energy site evaluation council activities under RCW
16 43.21F.045(2)(m);

17 (~~(z)~~) (aa) Staff employed by Washington State University to
18 administer energy education, applied research, and technology transfer
19 programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5).

20 (2) The following classifications, positions, and employees of
21 institutions of higher education and related boards are hereby exempted
22 from coverage of this chapter:

23 (a) Members of the governing board of each institution of higher
24 education and related boards, all presidents, vice presidents, and
25 their confidential secretaries, administrative, and personal
26 assistants; deans, directors, and chairs; academic personnel; and
27 executive heads of major administrative or academic divisions employed
28 by institutions of higher education; principal assistants to executive
29 heads of major administrative or academic divisions; other managerial
30 or professional employees in an institution or related board having
31 substantial responsibility for directing or controlling program
32 operations and accountable for allocation of resources and program
33 results, or for the formulation of institutional policy, or for
34 carrying out personnel administration or labor relations functions,
35 legislative relations, public information, development, senior computer
36 systems and network programming, or internal audits and investigations;
37 and any employee of a community college district whose place of work is

1 one which is physically located outside the state of Washington and who
2 is employed pursuant to RCW 28B.50.092 and assigned to an educational
3 program operating outside of the state of Washington;

4 (b) The governing board of each institution, and related boards,
5 may also exempt from this chapter classifications involving research
6 activities, counseling of students, extension or continuing education
7 activities, graphic arts or publications activities requiring
8 prescribed academic preparation or special training as determined by
9 the board: PROVIDED, That no nonacademic employee engaged in office,
10 clerical, maintenance, or food and trade services may be exempted by
11 the board under this provision;

12 (c) Printing craft employees in the department of printing at the
13 University of Washington.

14 (3) In addition to the exemptions specifically provided by this
15 chapter, the director of personnel may provide for further exemptions
16 pursuant to the following procedures. The governor or other
17 appropriate elected official may submit requests for exemption to the
18 director of personnel stating the reasons for requesting such
19 exemptions. The director of personnel shall hold a public hearing,
20 after proper notice, on requests submitted pursuant to this subsection.
21 If the director determines that the position for which exemption is
22 requested is one involving substantial responsibility for the
23 formulation of basic agency or executive policy or one involving
24 directing and controlling program operations of an agency or a major
25 administrative division thereof, the director of personnel shall grant
26 the request and such determination shall be final as to any decision
27 made before July 1, 1993. The total number of additional exemptions
28 permitted under this subsection shall not exceed one percent of the
29 number of employees in the classified service not including employees
30 of institutions of higher education and related boards for those
31 agencies not directly under the authority of any elected public
32 official other than the governor, and shall not exceed a total of
33 twenty-five for all agencies under the authority of elected public
34 officials other than the governor.

35 The salary and fringe benefits of all positions presently or
36 hereafter exempted except for the chief executive officer of each
37 agency, full-time members of boards and commissions, administrative
38 assistants and confidential secretaries in the immediate office of an

1 elected state official, and the personnel listed in subsections (1)(j)
2 through ~~((+u))~~ (v) and ~~((+x))~~ (y) and (2) of this section, shall be
3 determined by the director of personnel. Changes to the classification
4 plan affecting exempt salaries must meet the same provisions for
5 classified salary increases resulting from adjustments to the
6 classification plan as outlined in RCW 41.06.152.

7 Any person holding a classified position subject to the provisions
8 of this chapter shall, when and if such position is subsequently
9 exempted from the application of this chapter, be afforded the
10 following rights: If such person previously held permanent status in
11 another classified position, such person shall have a right of
12 reversion to the highest class of position previously held, or to a
13 position of similar nature and salary.

14 Any classified employee having civil service status in a classified
15 position who accepts an appointment in an exempt position shall have
16 the right of reversion to the highest class of position previously
17 held, or to a position of similar nature and salary.

18 A person occupying an exempt position who is terminated from the
19 position for gross misconduct or malfeasance does not have the right of
20 reversion to a classified position as provided for in this section.

21 **Sec. 37.** RCW 42.56.380 and 2007 c 177 s 1 are each amended to read
22 as follows:

23 The following information relating to agriculture and livestock is
24 exempt from disclosure under this chapter:

- 25 (1) Business-related information under RCW 15.86.110;
26 (2) Information provided under RCW 15.54.362;
27 (3) Production or sales records required to determine assessment
28 levels and actual assessment payments to commodity boards and
29 commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65,
30 15.66, 15.74, 15.88, 15.-- (the new chapter created in section 40 of
31 this act), 15.100, 15.89, and 16.67 RCW or required by the department
32 of agriculture to administer these chapters or the department's
33 programs;

- 34 (4) Consignment information contained on phytosanitary certificates
35 issued by the department of agriculture under chapters 15.13, 15.49,
36 and 15.17 RCW or federal phytosanitary certificates issued under 7
37 C.F.R. 353 through cooperative agreements with the animal and plant

1 health inspection service, United States department of agriculture, or
2 on applications for phytosanitary certification required by the
3 department of agriculture;

4 (5) Financial and commercial information and records supplied by
5 persons (a) to the department of agriculture for the purpose of
6 conducting a referendum for the potential establishment of a commodity
7 board or commission; or (b) to the department of agriculture or
8 commodity boards or commissions formed under chapter 15.24, 15.28,
9 15.44, 15.65, 15.66, 15.74, 15.88, 15.-- (the new chapter created in
10 section 40 of this act), 15.100, 15.89, or 16.67 RCW with respect to
11 domestic or export marketing activities or individual producer's
12 production information;

13 (6) Except under RCW 15.19.080, information obtained regarding the
14 purchases, sales, or production of an individual American ginseng
15 grower or dealer;

16 (7) Information that can be identified to a particular business and
17 that is collected under RCW 15.17.140(2) and 15.17.143 for certificates
18 of compliance;

19 (8) Financial statements provided under RCW 16.65.030(1)(d);

20 (9) Information submitted by an individual or business for the
21 purpose of participating in a state or national animal identification
22 system. Disclosure to local, state, and federal officials is not
23 public disclosure. This exemption does not affect the disclosure of
24 information used in reportable animal health investigations under
25 chapter 16.36 RCW once they are complete; and

26 (10) Results of testing for animal diseases not required to be
27 reported under chapter 16.36 RCW that is done at the request of the
28 animal owner or his or her designee that can be identified to a
29 particular business or individual.

30 **Sec. 38.** RCW 43.23.033 and 2006 c 330 s 27 are each amended to
31 read as follows:

32 (1) The director may provide by rule for a method to fund staff
33 support for all commodity boards and commissions if a position is not
34 directly funded by the legislature.

35 (2) Staff support funded under this section (~~and~~), RCW
36 15.65.047(1)(c), 15.66.055(3), 15.24.215, 15.26.265, 15.28.320,
37 15.44.190, 15.88.180, 15.89.150, and 16.67.190, and chapter 15.-- RCW

1 (the new chapter created in section 40 of this act) shall be limited to
2 one-half full-time equivalent employee for all commodity boards and
3 commissions.

4 NEW SECTION. Sec. 39. If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. Sec. 40. Sections 1 through 17, 19 through 32, and
9 39 of this act constitute a new chapter in Title 15 RCW."

10 Correct the title.

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